Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC, DEBTOR-IN-POSSESSION	)	
	)	
Applications to Renew the Licenses for AMTS Stations WQGF315, WQGF316, WQGF317, and WQGF318	)	FCC File Nos. 0007603776-79
	)	
Request for Extension and/or Waiver of AMTS Geographic License Performance Deadline	)	
	)	
Application to Assign Licenses to Choctaw Holdings, LLC	)	FCC File No. 0005552500

To: Marlene H. Dortch, Secretary
Attn: Chief, Wireless Telecommunications Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Maritime Communications/Land Mobile, LLC – Debtor-in-Possession ("Maritime"), hereby opposes the *Petition for Reconsideration and Review*, filed June 12, 2017, by Warren C. Havens and Polaris PNT PBC (collectively, "Havens"), in response to the Commission's *Order* (DA 17-450; WTB Mobility Division), released May 11, 2017.

1. To the extent Havens seeks to revisit the award of Second Thursday relief,[1] the pleading is grossly untimely and should be stricken. Havens previously sought reconsideration, albeit untimely and in violation of several other prescribed requirements, and the pleading cycle is closed. Havens's attempt to supplement his prior submission is improper and should not countenanced. Nevertheless, out of an abundance of caution, Maritime incorporates herein by this reference its *Motion to Strike and/or Dismiss as Defective Petitions for Reconsideration of*

[1] *Maritime Communications/Land Mobile, LLC, Debtor-in-Possession,* Order on Reconsideration and Memorandum Opinion and Order, WT Docket No. 13-85, 31 FCC Rcd 13729 (2016), *recon. pending*.

FCC 16-172; Request for Imposition of Sanctions; and Petition for Expedited Investigation, filed February 12, 2017.

2. The Havens reconsideration petition is to a large extent a rehash and regurgitation of arguments Havens has made, and that have been answered by Maritime and ruled on by the Commission, many times before. Accordingly, Maritime will make not attempt herein to address each and every statement or assertion, but stands by all of its prior pleadings. However, the failure to respond to any particular item is not to be deemed a concession. Far too much time and expense has already gone into repeatedly responding to jeremiads from Warren Havens, imposing addition burdens on Commission staff and eating into funds that would otherwise be available to satisfy the claims of innocent creditors.[2]

3. Havens balks at being required to demonstrate standing in this particular phase of the proceedings, even though he has ostensibly demonstrated it at earlier stages. But the very "authority" relied on so heavily by Havens, an unofficial federal practice manual,[3] contradicts him on this point. It states: "[T]he burden of establishing standing rests on the plaintiff. At each stage of the litigation—from the initial pleading stage, through summary judgment, and trial—the plaintiff must carry that burden. Standing must exist on the date the complaint is filed and throughout the litigation."[4]

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[2] Maritime recently attempted to demonstrate good faith and mitigate the conflict by voluntarily and unilaterally withdrawing pleadings adverse to various Havens entities. See Withdrawal of Petition for Reconsideration (filed Jan. 18, 2017) in FCC File Nos. 0002304206 & 02302769), and Withdrawal of Petitions for Partial Reconsideration (filed Jan. 18, 2017) in FCC File Nos. 0001370847, et al. But in dealing with Mr. Havens, no good deed goes abusively unpunished.

[3] *Federal Practice Manual for Legal Aid Attorneys*, published by the Sargent Shriver National Center on Poverty Law (hereinafter "*Shriver Foundation Practice Manual*") (http://federalpracticemanual.org).

[4] *Id.* at § 3.1.A (footnotes omitted) citing *DaimlerChrysler Corporation v. Cuno*, 547 U.S. 332, 342, n.3 (2006); *FW/PBS Incorporated v. Dallas*, 493 U.S. 215, 231 (1990); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *Davis v. Federal Election Commission*, 554 U.S. 724, 734 (2008).

4. To the extent Havens may have personally been afforded personal standing at earlier stages and in other aspects of this matter, it was at a time when various entities in which he was the principal owner and controller were also parties. The reconsideration petition, however, has been filed in the name of Havens and PNT, neither of which holds any authorizations or has any pending actions that would be adversely affected by the challenged action. Havens may not claim standing on the theory that these entities are adversely affected when the entities themselves have not intervened at this stage.[5]

5. Havens advances a "zone of interest" theory as an alternative and (according to him) more lenient standard that Article III standing. But the "zone of interest" principle is something other than or contrary to Article III standing. Moreover, as the Shriver manual relied on by Havens explains, it is actually among the "prudential imitations on standing,"[6] rather than a wide open gate Havens advocates. It is rather a "require[ment] that plaintiffs establish that their grievance 'must arguably fall within the zone of interests protected or regulated by the statutory provision or constitutional guarantee invoked in the suit.'"[7]

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[5] A corporation, regardless of its size, is a legal entity separate from its shareholders. Thus, a shareholder cannot bring a personal suit in his own name to vindicate any rights the corporate entity may have. See *Am. Airways Charters, Inc. v. Regan*, 746 F.2d 865, 873 n.14 (D.C. Cir. 1984); see also Blumberg et al., 5 BLUMBERG ON CORPORATE GROUPS § 167.03 at 21 (2d ed. 2015) ("[I]t is hornbook law that in the absence of express statutory authorization, a shareholder has no standing to bring an action in its own name and on its own behalf for an injury sustained by the corporation."); William Meade Fletcher, 12B FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS § 5910 at 502-04 (2009) ("The fact that a shareholder owns all, or practically all, or a majority of the stock does not of itself authorize the shareholder to sue as an individual."). The same separations between a business entity and its owners that applies to corporations also applied to limited liability companies. E.g., *Weddell v. H2O, Inc.*, 271 P.3d 743, 748 (Nev. 2012) ("Limited-liability companies (LLCs) are business entities created to provide a corporate-styled liability shield."). Equity requires that an owner accept the burdens of this separation between the company's rights and his own, just as he reaps its benefits. *Cf. Williams v. Mordkofsky,* 901 F.2d 158, 164 (D.C. Cir. 1990)

[6] *Shriver Foundation Practice Manual* at § 3.1.D.

[7] *Id.* at § 3.1.D.1, quoting *Bennett v. Spear*, 520 U.S. 154, 162 (1997).

6. Havens seeks special status to advance what he claims are public interest objectives, asserting his interest in Skybridge Spectrum Foundation, ostensibly a non-profit entity. But this strategy is defeated by the fact that Skybridge itself has not intervened. In essence, Havens is claiming standing as a "private attorney general" protecting the public interest. But the Commission has long held that assertion "intervention on behalf of the public is not allowed to press private interests but only to indicate the broad public interest relating to a licensee's performance of the public trust inherent in every license."[8] The Commission has clarified, however, that this policy

> does not confer standing on all responsible members of the public to act as private attorneys general without regard to their connection with the proceeding and specifically differentiates between those representing the public "as distinguished from private or commercial interests." Intervention on behalf of the public is allowed not to press private interests but only to "vindicate the broad public interest.[9]

7. Havens dresses up his lupine private interests in the faux sheep's clothing of public interest rhetoric.[10] He alleges, without supporting documentation, that his licensee entities have assigned litigation rights to him. The private attorney general rubric is intended to provide for advocacy on behalf of a large public where participation by individual members is not practical. But the Havens-affiliated entities that actually hold licenses are a finite group that have in the past intervened in these matters directly. They did not timely seek reconsideration, and Havens is not permitted to act on their behalf. [11]

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[8] *Office of Communication of the United Church of Christ v. F.C.C.*, 359 F. 2d 994, 1006 (D.C. Cir. 1966), *rev'd and remanded on other grounds*, 425 F. 2d 543 (1969).

[9] *Tele-Vue Systems, Inc.*, 32 FCC 2d 876, 878 (1971).

[10] Havens cites *Clinton v. New York*, 524 U.S. 417 (1998), for the proposition that a private commercial interest may provide grounds for Article III standing. But it is equally true in FCC proceedings that the Commission may, and often does, lack jurisdiction to adjudicate the asserted private interest that gives rise to standing. Thus, even if the licensee entities had directly sought reconsideration, the Commission would not necessarily be the proper forum for litigating any alleged injury to those private commercial interests.

[11] See n.5, *supra*.

8. Turning to the merits, most of the arguments advanced by Havens are, as previously stated,[12] positions advanced by him many times before, answered by Maritime, and rejected by the Commission. In this regard, Havens is once again engaging in serial, duplicative litigation, an abuse of process. Maritime must therefore renew and reiterate its request that the Commission take corrective measures, including imposition of sanctions.[13]

9. The only aspect of the Havens reconsideration petition on the merits that arguably requires response is his objection to the waiver of the performance deadline. The Commission sufficiently explained and justified this action based on the unique circumstances of this case. Boiled down to its essence, Havens argues that the Commission erred in granting a limited waiver of the construction deadline because MCLM allegedly failed to satisfy the regulatory requirements for an extension of that deadline. But the very essence of a rule waiver is to provide for exceptions to a particular rule, evaluated on a case-by-case basis. Havens illogically argues that a rule waiver can never be used to authorize something that is precluded by the rule being waived. Taken to its logical conclusion, this absurd circular reasoning would perforce require the denial of *any* rule waiver in *any* situation that would violate the rule for which waiver is sought. In other words, according to Havens rule waivers are *never* permitted—even though they are expressly provided for in the Administrative Procedure Act and Commission's regulations.

[12] See ¶¶ 1-2 & n.2, *supra*.

[13] See *Motion to Strike and/or Dismiss as Defective Petitions for Reconsideration of FCC 16-172; Request for Imposition of Sanctions; and Petition for Expedited Investigation*, filed February 12, 2017.

WHEREFORE, the foregoing premises considered, it is requested that the Havens reconsideration petition be dismissed, stricken, and/or denied.

Respectfully submitted,

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Dated: June 27, 2017

CERTIFICATE OF SERVICE

I certify that on this 20th day of April, 2016, I caused copies of this document to be served, by U.S.P.S., First Class postage prepaid, on the following:

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